IN THE

Supreme Court of the United States

October Term, 1964

No. 360

A. M. HARMAN, JR., ET AL., *Appellants*,
v.
LARS FORSSENIUS, *Appellee*.

and

A. M. HARMAN, JR., ET AL., *Appellants*,
v.
HORACE E. HENDERSON, *Appellee*.

JURISDICTIONAL STATEMENT

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August 7, 1964

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HORACE E. HENDERSON, *Appellee.*

JURISDICTIONAL STATEMENT

Appellants appeal from the Final Order of the United States District Court for the Eastern District of Virginia, Richmond Division, entered on May 29, 1964 (attached hereto as Appendix I), declaring unconstitutional certain portions of Virginia's recent amendments of its registration and voting laws. These amendments were enacted (i) to give effect, in specified federal elections, to the new 24th Amendment to the Constitution of the United States, and (ii) to retain in all state and local elections the poll tax required by the Constitution of Virginia. Such election law amendments are found in the Acts of the General Assembly of Virginia, Extra Session, 1963 (the Special Acts), excerpts from which are attached hereto as Appendix III.

The Final Order appealed from held invalid under the Constitution of the United States the portions of the Special Acts which *may* require the filing of a certificate of continuing residence in advance of the general election as a prerequisite to the right of persons otherwise qualified to vote in elections for certain federal officers. Such Final Order also restrained and enjoined the Appellants from requiring compliance by an elector with such portions of the Special Acts. The Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that the appeal presents substantial and serious questions.

I. OPINION BELOW

The opinion of the District Court for the Eastern District of Virginia, Richmond Division, is not yet reported. A copy of this opinion is attached hereto as Appendix II.

II. JURISDICTION

These alleged class actions, consolidated by order of the court below, were brought to have all of the Special Acts declared unconstitutional, pursuant to 28 U.S.C. § 2201, and to enjoin the Appellants from enforcing, executing or administering such Acts, or doing any act thereunder, including without limitation, receiving any result of elections or issuing certificates of election for any election of federal officers conducted under the said Acts. Jurisdiction under 28 U.S.C. § 1343(3) was pleaded and admitted, and a three-judge District Court, as required by 28 U.S.C. §§ 2281, 2284, was convened. The Final Order of the District Court, which declared unconstitutional only the aforementioned portions of the Special Acts with respect to proof of residence in Federal elections, and enjoined enforcement of only

such portions, was entered on May 29, 1964, and Notice of Appeal was filed in that court on June 11, 1964. Jurisdiction of the Supreme Court to review the Final Order on direct appeal is conferred by 28 U.S.C. § 1253. The following decisions sustain the jurisdiction of this Court: *England* v. *Louisiana State Bd. of Medical Examiners*, 375 U. S. 411, 415 (1964); *Harrison* v. *NAACP*, 360 U. S. 167, 170 (1959); *St. John* v. *Wisconsin Employment Relations Bd.*, 340 U. S. 411, 414 (1951).

III. STATUTES INVOLVED

The statutes involved are Chapter 1 of the Acts of the General Assembly of Virginia, Extra Session, 1963, and Section 24-17.2 of the Code of Virginia of 1950 (Supp. 1964), added by Chapter 2 of the Acts of the General Assembly of Virginia, Extra Session, 1963, which were held unconstitutional by the court below. Such specified portions of the Special Acts are hereinafter designated as the Statutes Involved. Because of their length, the Statutes Involved are not set out here verbatim. Their text is set forth on pages 13-15 and 17-19 of Appendix III to this Statement, which also contains other relevant excerpts from the Special Acts.

IV. QUESTIONS PRESENTED

1. Did the court below err in holding that the Statutes Involved, which may require a voter in an election for federal officers to prove residence by filing a certificate of continuing residence in advance of the election, thereby create a "qualification" for electors of the Congress not demanded of electors of the House of Delegates, the most numerous branch of the Virginia legislature, and are thus repugnant to Article I, § 2 and Amendment 17 of the Constitution of the United States?

2. Did the court below err in issuing on the authority of Article I, § 2 and Amendment 17 of the Constitution of the United States a general injunction against requiring compliance by an elector with the Statutes Involved in elections for President and Vice-President of the United States?

3. Should the court below have stayed the proceedings in these cases pending an interpretation of the Special Acts by the courts of Virginia in conformity with the doctrine of abstention?

4. Should the court below have sustained (i) the motions to dismiss the complaints in both cases for failure to join indispensable parties, or (ii) the motion to dismiss in the *Henderson* case for the plaintiff's want of standing to sue?

V. STATEMENT OF THE CASE

Since the adoption of its Constitution of 1902, Virginia has required, as a qualification for voters and new registrants in all elections, payment in person in advance of elections of the state capitation or poll tax. See *Va. Const.* §§ 18, 20. The poll tax (used for educational purposes) is the only state-wide tax assessed annually against all state residents, and it is payable by such residents to the local revenue official of the political subdivision in which they reside. See *Va. Const.* §§ 173, 38.

At the same time payment of the poll tax became a voter qualification, permanent registration became an institution in Virginia. Once a voter has registered under the system that presently obtains, he is registered for life, and his name will ordinarily remain upon the registration rolls even after he has abandoned his state or municipal residence. Obviously, to prevent fraudulent voting by persons once registered who were no longer residents, a means of checking the

continuing state and municipal residence qualifications of registered persons was necessary. The list of persons who, in their respective localities, had paid their state capitation taxes to qualify themselves to vote provided just such a means. See Excerpts from Address of Governor A. S. Harrison to the General Assembly of Virginia, Extra Session, 1963, Senate Doc. No. 1, attached hereto as Appendix IV.

When ratification of Amendment 24 to the Constitution of the United States, which absolutely prohibits the states from making payment of a poll tax a mandatory prerequisite for voting in certain enumerated federal elections, became imminent, it appeared that two fundamental changes in Virginia's election laws were necessary if such laws were to comply with both the Constitution of the United States and the Constitution of Virginia. First, a dual system of registration and voting, with the poll tax in effect for state and local elections and inoperative for federal elections, had to be established to clarify the effect of the Amendment upon the existing system. Second, a new means of checking the residence qualifications of federal electors who chose not to pay their poll taxes had to be found.

The Governor accordingly convened an Extra Session of the Virginia General Assembly, which proceeded to enact the Special Acts, which went into effect on February 19, 1964. On February 20, 1964, the Appellees instituted these suits, which were consolidated by an order of the court below entered on March 4, 1964.

As has previously been mentioned, these suits were instituted by the Appellees as class actions to have the Special Acts in their entirety declared unconstitutional, and to have the Appellants enjoined from enforcing any part of them. The Appellees are both registered voters, but while the Appellee Henderson has paid his poll taxes in the manner prescribed by the Constitution of Virginia and the Special Acts,

and thus cannot be denied his vote in any election held in 1964, the Appellee Forssenius in 1964 has neither paid his poll taxes nor filed the certificate of residence as provided in the Special Acts. The Appellants are the members of the Virginia State Board of Elections, the Treasurer of Roanoke County, Virginia, and the Director of Finance in Fairfax County, Virginia.

As has previously been mentioned also, the court below held unconstitutional only the Statutes Involved and generally enjoined the Appellants from enforcing them against any elector by the Final Order entered on May 29, 1964. Effectiveness of the Final Order was, however, suspended for thirty days so that the Appellants might seek a further stay from this Court or a Justice thereof during the pendency of their appeal. An Application for a Stay of Order was filed by the Appellants with Mr. Chief Justice Earl Warren on June 12, 1964, and was denied on June 24, 1964.

VI. QUESTIONS ARE SUBSTANTIAL

The Appellants respectfully submit that the questions presented by this appeal are so substantial as to require full consideration by this Court, with briefs on the merits and oral argument, for their resolution. This would be so even if the opinion of the court below were not, as the Appellants believe, clearly erroneous in so many fundamental respects.

A.

Questions are Novel and Important to Virginia and Other States as Well.

The questions are both novel and important because their resolution will require a comprehensive interpretation, unprecedented in the history of this nation, of a portion of the original Constitution—Article I, § 2 (and the identical lan-

guage of Amendment 17) and Article II, § 1—and of also its most recent amendment, Amendment 24, as those three provisions relate to the respective powers, and the limitations thereon, of the state and federal governments with regard to elector qualifications. A decision of these questions will be of importance generally throughout the country and it will be of particular importance not only to the State of Virginia, but also to the other five states—Alabama, Arkansas, Massachusetts, Mississippi and Texas—in which payment of a poll tax is in one way or another a part of the fabric of the election laws. It is hardly necessary to add that the questions presented are of great concern to the Virginia public, since they involve the validity of measures designed to preserve fair elections and prevent irregularity at the polls.

The foregoing reasons show generally the substantiality of the questions presented; the following reasons demonstrate their substantiality specifically.

B.

The Court Below Erred in Holding That the Certificate of Residence is an Additional Qualification for Voting.

To hold that the certificate of residence provided for in Section 24-17.2 of the Statutes Involved is a qualification of electors of the Congress not required of electors of the Virginia House of Delegates, and that it is therefore repugnant to Article I, § 2 and Amendment 17, the court below must necessarily have concluded first, that the certificate itself is a qualification, and second, that it is mandatory for Congressional electors. The Appellants believe that the lower court erred in reaching both of these conclusions.

It is perhaps noteworthy that the court below was unable to find any precedent for its conclusion that the certificate

is a qualification in the constitutional sense. This may be so because all the pertinent cases are precisely to the contrary. See cases collected in Annot., 14 A.L.R. 260 (1921). Two cases which are particularly in point are *Southerland* v. *Norris*, 22 Atl. 137 (Md. 1891) and *Pope* v. *Williams*, 56 Atl. 543 (Md. 1903), *aff'd.*, 193 U. S. 621 (1904). These cases held that legislative enactments requiring certain persons to register their intent to become or remain residents well in advance of election day did not create qualifications in addition to those found in the State Constitution, but merely established the methods of *proving* residence.

In the *Southerland* case, the statute in question raised a conclusive presumption that one removing from the state, who failed to make an affidavit before a clerk of court that his residence was not being abandoned but would be resumed, had abandoned his residence in Maryland. The court said, 22 Atl. at 138:

> The section in question does not purport to, and does not in fact, add anything to the qualifications of . . . residence as they are fixed in the constitution. It deals exclusively with the evidence by which one of these qualifications—that of residence—shall be proved. . . .

Similarly, in the *Pope* case, the pertinent statute provided that persons coming into the state could prove their intent to become residents only by registering it on a public record book at least one year in advance of the election. The Maryland court again declared, 56 Atl. at 544:

> Nor does the statute impose qualifications for voting other than those prescribed by the constitution. It leaves those qualifications precisely as they were before. It deals exclusively with the evidence necessary to estab-

lish residence, by providing what the evidence of residence shall be.

The court below attempted to distinguish these cases on the ground that they are not "authority for saddling a voter in a Federal election, in order to maintain his status, with a step [qualification] beyond that required of a voter in a State election." The Appellants agree, and this aspect of the case will be discussed later. But the cases cited were not intended to be used as authority for anything other than the proposition that requiring a voter *to affirm his residence* in advance of an election is not adding a qualification to those enumerated in the Virginia Constitution.

The lower court reasoned that the certificate of residence must be a qualification because of the "obvious fact" that its alternate, payment of a poll tax, has no probative value on the question of residence. The Appellants are at a loss to see how the court found this "obvious fact." The only part of the record dealing with the evidentiary effect of payment of a poll tax is Governor Harrison's Address, in Appendix IV, which in every respect contradicts the court's finding. The Constitution of Virginia, Section 173, declares that the poll tax is assessable only against residents, and it is plainly irrational to suppose that anyone other than a resident would pay it voluntarily. The Virginia Supreme Court of Appeals, as have many other courts and at least one state legislature, has found that payment of a poll tax does, in fact, have an important bearing on residence questions. See *Cooper's Adm'r* v. *Commonwealth*, 121 Va. 338, 341, 93 S.E. 680 (1917); *Ex parte Weissinger*, 22 So. 2d 510, 514 (Ala. 1945); *Chase* v. *Chase*, 29 Atl. 553, 555 (N. H. 1891); *Clark* v. *Stubbs*, 131 S.W. 2d 663 (Tex. Civ. App. 1939); compare *Mass. Gen. Laws Ann.* ch. 51, § 43 (1958).

The second necessary finding of the lower court—that the certificate of residence is *mandatory* for the federal voter—is simply not in accord with the plain wording of the Statutes Involved. The certificate is only one of two *permissively alternative means* by which the federal voter—or any voter, for that matter—may prove continuing residence. The other remains, as it always has been, payment of a poll tax. If the federal voter chooses to perform his civic responsibilities by paying his taxes promptly, he need never file a certificate of residence at all.

Thus, the Appellants submit that the lower court's holding that the certificate of residence is an unlawful qualification, instead of what Section 24-17.2 of the Statutes Involved says it is: "proof of residence," is clearly erroneous.

C.

The Court Below Erred in Applying Article I, § 2, and the 17th Amendment to Presidential Elections.

The Appellants urge that it was manifestly improper for the court below to enter an order applicable to elections for President and Vice-President of the United States. There is no legal foundation in the opinion or the law generally for an order of this breadth.

If it is assumed that the certificate of residence is a qualification for the electors of Congress not required of electors of the Virginia House of Delegates, this would render it unconstitutional in *Congressional* elections for repugnancy to Article I, § 2 and Amendment 17, just as the court below held. But Article I, § 2 and Amendment 17 do not extend beyond Congressional elections. There is nothing in the Constitution of the United States requiring that the qualifications of voters for the President and Vice-President be the same as the qualifications for voters for any other officer,

federal or state. On the contrary, the Constitution provides solely that the President and Vice-President are to be elected by the Electoral College, see Amendment 12, whose members are appointed by each state, "in such Manner as the Legislature thereof may direct." Article II, § 1.

It is therefore clear that since the lower court's opinion was bottomed solely upon Article I, § 2 and Amendment 17, the opinion must leave the certificate of residence operative for voters in Presidential elections. Consequently, even if the opinion of the court below had established a legal basis for an order enjoining the Appellants from requiring a certificate of residence of electors of the Congress, it provides no legal basis whatever for an order similarly enjoining the Appellants from requiring the certificate from popular electors of the President and Vice-President.

D.

The Court Below Should Have Applied the Doctrine of Abstention in Cases Involving Voter Qualifications Under the Constitution of Virginia.

In view of the many decisions of this Court applying the doctrine of abstention, and in view of the unmistakable intent of the Constitution of the United States, it was clearly erroneous for the court below to overrule summarily the Appellants' motions for a stay of proceedings pending an interpretation of the Special Acts by the Virginia courts.

These cases were instituted immediately after the Special Acts went into effect and, of course, before there was any opportunity for construction by the Virginia courts. Compare *Albertson* v. *Millard*, 345 U. S. 242 (1953). If a Virginia court should find that the certificate of residence requirement of the Special Acts is an independent or superadded qualification in addition to those found in the Virginia

Constitution, it would concededly hold the requirement invalid as a matter of state law, and a crucial federal constitutional issue would accordingly disappear from the case. See *Spector Motor Serv., Inc.* v. *McLaughlin,* 323 U. S. 101, 105 (1944).

It is difficult to conceive of a more important and valid concern of a state and its people than the orderly administration of elections and the prevention of fraud and irregularity at the polls. Compare *Stainback* v. *Mo Hock Ke Lok Po,* 336 U. S., 368, 383 (1949). The lower court's Final Order has worked a "disruption of an entire legislative scheme of regulation," *Hostetter* v. *Idlewild Bon Voyage Liquor Corp.,* ..... U. S. ..... 84 Sup. Ct. 1293, 12 L. Ed. 2d 350 (1964), and it has done so needlessly, since the Virginia Declaratory Judgments Act provides an "expeditious avenue," *Harrison* v. *NAACP,* 360 U. S. 167, 178 (1959), by which the Appellees, with full protection of all their federal constitutional claims, could have presented the issues raised below to the proper Virginia tribunals, which are unquestionably far better equipped than the lower court to unravel the skeins of local law and administrative practices in which the Appellees' claims are entangled.

These cases are not in the least similar to *Davis* v. *Mann,* ..... U. S. ..... 84 Sup. Ct. 1453, 12 L. Ed. 2d 609 (1964), except that both involve elections and voting. The relevant state constitutional and statutory provisions were said in *Davis* to be "clear and unambiguous." Here the question of validity of the Statutes Involved under the *Virginia* Constitution is far from clear, as demonstrated by the fact that the Appellees devoted two-thirds of their opening brief in the court below to the argument of this pure question of state law. The court below chose to ignore the state question and to decide that the Statutes Involved are "qualifications"

under the United States Constitution, although it is perfectly clear (and has been for over 150 years) that such Constitution does not *create* such qualifications but only *adopts* those created by the states in the exercise of a power limited at the federal level only by Amendments 15, 19 and 24.

Thus, it is apparent that there remains in these cases a threshold question of state law that is novel, difficult and still unanswered—but possibly dispositive of all the issues herein. All the "concerns which have traditionally counseled a federal court to stay its hand," *Martin* v. *Creasy*, 360 U. S. 219, 224 (1959), exist in these cases in a marked degree, and the lower court should therefore have abstained.

But in addition to the presence of the aforementioned concerns, there is another reason, of constitutional dimensions, why the court below erred in refusing to abstain. According to the earliest great commentaries on the Constitution, to numerous decisions of this Court and to the plain wording of the provisions themselves, Article I, § 2 (and the identical language of Amendment 17) of the Federal Constitution establish the *exclusive* power of the states in matters of voter qualifications for electors of the Congress. *E.g.*, *Minor* v. *Happersett*, 88 U. S. (21 Wall) 162, 171 (1875); *Ex parte Yarbrough*, 110 U. S. 651, 663 (1884); *Pope* v. *Williams*, 193 U. S. 621, 633 (1904); *The Federalist*, No. 52, at 341-42 (Modern Library ed.) (Hamilton or Madison); 1 *Story, Constitution* §§ 583-86 (4th ed. Cooley 1873); *Black, American Constitutional Law* 535-37 (2d ed. 1897); see *Breedlove* v. *Suttles*, 302 U. S. 277 (1937); *Lassiter* v. *Northampton County Bd. of Elections*, 360 U. S. 45 (1959). To be sure, once voter qualifications are fixed by the states, they become, through adoption by the same federal constitutional provisions, part of the Constitution itself, see *Ex parte Yarbrough, supra;* and thus,

once a voter is qualified under state law, his right to vote for members of the Congress becomes a federally protected right, see *United States* v. *Classic*, 313 U. S. 299, 314-15 (1941). But the preliminary process of fixing voter qualifications unquestionably is purely and wholly of a matter of state law: constitutional, statutory (if voter qualifications are not set out in the state constitution) and decisional (if the question should arise whether or not a constitutional or statutory provision establishes a qualification). See *Ventre* v. *Ryder*, 176 Supp. 90, 97 (W. D. La. 1959).

Federal authority is likewise excluded by the Constitution from the matter of establishing the qualifications of voters for electors of the President and Vice-President, where such electors are chosen by popular vote. Article II, § 1 entrusts this matter wholly and exclusively to the states. See *e.g. McPherson* v. *Blacker*, 146 U. S. 1, 27 (1892); *In re Opinion of the Justices*, 107 Atl. 705, 706 (Me. 1919); *McCrary, Elections* § 38 (4th ed. 1897).

Thus, the Federal Constitution by necessary implication, gives exclusive competence to the state courts to decide the question whether a state legislative enactment creates a qualification or not, and the same constitution must therefore effectively deprive the federal courts of competence to decide that question. It is quite plain that Article I, § 2, Article II, § 1 and Amendment 17 prevent Congress, the federal legislature, from enacting legislation to establish voter qualifications, and it is likewise plain by parity of reasoning that these same provisions must, when the issue is presented, prevent the federal courts from establishing qualifications, as the court below did, by judicial decree. And if these provisions do not absolutely prohibit the federal courts from deciding questions of voter qualifications, surely they indicate most forcefully that the state courts are

the proper tribunals for the resolution of such questions.

Therefore, the court below erred in denying the Appellants' motions to stay, since all the traditional reasons compelling abstention are present, and additionally because the Constitution requires that the very question decided by the court below be submitted to the courts of Virginia. Due respect for the powers of the states in this area, which antedate the Constitution itself and which Article I, § 2, Article II, § 1 and Amendment 17 were intended to preserve intact, demands nothing less.

E.

The Court Below Erred in Overruling the Appellants' Motions to Dismiss.

The court below overruled the Appellants' motions to dismiss in both cases for failure to join indispensable parties, namely the registrars and other local election officials of Roanoke and Fairfax Counties where the Appellees reside. Its reasoning was that since it could halt the certificates of residence at their source, as it did, by forbidding the State Board of Elections and the local revenue officials who had been joined from specifying the form of the certificates and from receiving them, all indispensable parties were before the court.

If the issue of indispensability were to be determined by the nature of the relief eventually *granted*, there could be no substantial question as to the propriety of the lower court's holding. But this is not the test; the test is rather whether an order granting the relief *desired* would require the party not joined to take action or refrain from taking it, or, to say the same thing, whether such an order can expend itself solely upon the persons before the court. See *Williams* v. *Fanning*, 332 U. S. 490, 493, 494 (1947); 2 *Barron & Holtzoff, Federal Practice & Procedure* § 515 (1961).

Under this test there is a substantial question in these cases as to the propriety of the action of the lower court in summarily overruling the Appellants' motions to dismiss. It will be remembered that the Appellee complaints prayed for a general injunction against enforcement of all of the Special Acts—including those parts thereof dealing with voter registration, whose constitutionality was argued at great length below. None of the Appellants have any authority at all over the activities of local registrars, who were not joined, other than authority to supervise them so as to promote uniformity of practice, purity and regularity in all elections. See *Va. Code* § 24-25. The order prayed for, which would necessarily include an injunction of registration under the Special Acts, could accordingly not expend itself upon only those persons before the court, and indispensable parties were therefore not joined.

The rule fashioned by the court below leads to erosion of the concept of indispensability, for in many cases the relief eventually granted could be tailored to the capacity or authority of the parties actually before the court, and it would accordingly never be necessary to join other persons. The Appellants submit that this Court should correct the potentially disruptive procedural error of the lower court and reaffirm the traditional test of indispensability.

In good faith, and with ample authority to support them, the Appellants moved the court below to dismiss the complaint of the Appellee Henderson on the ground that, as he was a registered, qualified voter and had proved his residence by paying his poll taxes, he could not and would not be denied his ballot under color of the Special Acts in any 1964 election and he therefore lacked standing to sue. The lower court did not pass on the motion either at the hearing or in its opinion, and counsel for Appellants had to assume that they could consider the motion denied.

Although the Appellants concede that the Appellee Forssenius has standing to sue, and that the same issues were raised in his complaint as were raised in the complaint of the Appellee Henderson, nevertheless there is a substantial question as to the propriety of the lower court's treatment of the motion to dismiss Henderson's complaint. Since Henderson is neither harmed nor threatened with immediate harm by any of the Special Acts he attacks, it is elementary that he lacks standing to call their constitutionality into question. *E.g., Poe* v. *Ullman,* 367 U. S. 497 (1961); *Alabama State Fed'n. of Labor* v. *McAdory,* 325 U. S. 450 (1945); *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288 (1936); *Id.* at 346-48 (Brandeis, J., concurring); *Tyler* v. *Judges of Court of Registration.* 179 U. S. 405 (1900); *Marye* v. *Parsons,* 114 U. S. 325 (1885).

Important procedural rules should not be ignored on the sole ground that they are not dispositive in a case to which they apply. This Court should reaffirm the rules with respect to standing to sue by dismissing the Henderson case even though the same issues are present in the Forssenius case.

VII. CONCLUSION

It is submitted that the questions presented by this appeal as to the propriety of the lower court's decision on the merits and the scope of the Final Order, and as to the propriety of the lower court's denial of the Appellants' motions to stay

proceedings and to dismiss, are substantial for the foregoing reasons, and that they require for their resolution plenary consideration by this Court, with briefs on the merits and oral argument.

Respectfully submitted,

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PROOF OF SERVICE

I, Richard N. Harris, one of the attorneys for the Appellants herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 7th day of August, 1964, I served copies of the foregoing Jurisdictional Statement on the several Appellees hereto by mailing same in duly addressed envelopes, with first-class postage prepaid to their respective attorneys of record as follows: H. E. Widener, Jr., Esq., Widener & Widener, Attorneys at Law, Reynolds Arcade Building, Bristol, Virginia; David H. Frackelton, Esq., Attorney at Law, Reynolds Arcade Building, Bristol, Virginia; L. S. Parsons, Jr., Esq., Parsons, Stant & Parsons, Attorneys at Law, Maritime Tower, Norfolk, Virginia; J. L. Dillow, Esq., Dillow & Andrews, Attorneys at Law, Giles Professional Building, Pearisburg, Virginia; John N. Dalton, Esq., Dalton, Poff & Turk, Attorneys at Law, First & Merchants National Bank Building, Radford, Virginia; and to Bentley Hite, Esq. Attorney at Law, First National Bank Building, Christiansburg, Virginia. Copies thereof were also mailed, in duly addressed envelopes, with first-class postage prepaid to: Ralph G. Louk, Esq., Commonwealth's Attorney for Fairfax County, Fairfax, Virginia, counsel of record below for the defendant, L. M. Coyner, and to Edward H. Richardson, Esq., Commonwealth's Attorney for Roanoke County, Roanoke, Virginia, counsel of record below for the defendant, James E. Peters.

RICHARD N. HARRIS
Assistant Attorney General

APPENDIX I

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

AT RICHMOND

Civil Actions
Nos. 3897 and 3898

Lars Forssenius, *Plaintiff*
v.
A. M. Harman, Jr., et al., *Defendants*

and

Horace E. Henderson, *Plaintiff*
v.
A. M. Harman, Jr., et al., *Defendants*

FINAL ORDER

Upon consideration of the pleadings, the stipulations of the parties, as well as the exhibits offered in evidence, and the argument of counsel thereon, the Court declares, for the reasons stated in its opinion this day filed, that the portions of Chapters 1 and 2, approved November 21, 1963, of the Acts of the General Assembly of the Commonwealth of Virginia, Extra Session 1963, which require the filing of a certificate of continuing residence six (6) months before a general election as a prerequisite to the right of a person

otherwise qualified to vote in a primary or general election for President or Vice President, or for Senators or Representatives in Congress, are invalid because in violation of the Constitution of the United States; and accordingly it is

ADJUDGED, ORDERED and DECREED that the defendants herein, their agents, servants and employees be, and each of them is hereby, restrained and enjoined from requiring compliance by an elector with the said part of the said Acts of the General Assembly.

It is further ORDERED that the effectiveness and execution of the foregoing restraint and injunction be suspended for a period of 30 days from this date to allow the defendants, if they be so advised, to seek a further stay of this order from the Supreme Court, or one of the Justices thereof, during the pendency of any appeal therefrom, and this suspension is allowed without bond but shall cease upon the expiration of the said 30-day period unless it is enlarged as aforesaid upon appeal.

/s/ ALBERT V. BRYAN
United States Circuit Judge

/s/ WALTER E. HOFFMAN
United States District Judge

/s/ JOHN D. BUTZNER, JR.
United States District Judge

May 29th, 1964.

APPENDIX II

(Argued May 12, 1964 Decided May 29, 1964)

Before Bryan, Circuit Judge, and Hoffman and Butzner, District Judges.

H. E. Widener, Jr., Esquire, Bristol, Virginia; David H. Frackleton, Esquire, Bristol, Virginia; L. S. Parsons, Jr., Esquire, Norfolk, Virginia; J. L. Dillow, Esquire, Pearisburg, Virginia; John N. Dalton, Esquire, Radford, Virginia; Bentley Hite, Esquire, Christiansburg, Virginia, attorneys for the plaintiffs.

Robert Y. Button, Esquire, Attorney General of Virginia; Richard N. Harris, Esquire, Assistant Attorney General of Virginia; E. Milton Farley, III, Esquire, Richmond, Virginia; Joseph C. Carter, Jr., Esquire, Richmond, Virginia; Edward H. Richardson, Esquire, Commonwealth's Attorney of Roanoke County, Salem, Virginia; Ralph G. Louck, Esquire, Commonwealth's Attorney of Fairfax County, Fairfax, Virginia, attorneys for the defendants.

ALBERT V. BRYAN, *Circuit Judge:*

UNANIMOUS OPINION

Since the adoption of the 24th Amendment forbidding exaction of a poll tax as a prerequisite to voting in a Federal election,* Virginia has enacted an additional qualification for the Federal voter. If he has not paid the poll tax still required in State elections, he must file within the same time a certificate of continuing residence. No such certificate is

* An election for a State or local office we shall term a State election and a voter therein a State elector; an election for a Federal office will be a Federal election, and a voter therein a Federal elector.

demanded of a voter in an election for the Virginia House of Delegates. By Article I, Section 2 and by the 17th Amendment of the United States Constitution, it is ordained that electors choosing a Representative or Senator in Congress "shall have the qualifications requisite for electors of the most numerous branch [the House of Delegates] of the State Legislature(s)." Thus, the Virginia statutes—1963 Acts—imposing the extra test upon the Federal elector contravenes, as this suit now asserts, these constitutional provisions.

The plaintiffs further assert that the ultimate effect of the 24th Amendment is to rescind the power of the State to insist upon the payment of a poll tax as a condition for voting in the election of members of the House of Delegates. We do not agree.

These propositions were posed by the two complaints here, one of Lars Forssenius and the other of Horace E. Henderson, both citizens of the United States and of the State of Virginia having the requisite residence to vote, and each suing for himself and others as a class similarly situated. The suits have been consolidated and are now treated as a single cause.

The 1963 Acts were adopted at an extra session of the Virginia Legislature in anticipation of the promulgation of the 24th Amendment, which occurred February 4, 1964. Prior thereto, the Constitution of Virginia, in Article II, and the statutes of the State, Code §§ 24-67 and 24-17, provided for the registration and voting of electors in all elections, both Federal and State, primary and general. In brief, the requirements were: age of not less than 21 years, residence within the State for one year and of the city or county six months and the payment "at least six months prior to the election . . . to the proper official all State poll

taxes [$1.50 annually] assessed or assessable against him for three years next preceding such election." Registration is required only once. Each election year, however, there is compiled a new list of poll taxes paid.

Amendment 24, so far as pertinent, provides in § 1:

> ". . . The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax."

Obviously, the effect of this amendment was to annul in Virginia's Constitution and statutes payment of a poll tax as a condition for registering and voting in primary and general Federal elections. Guinn v. United States, 238 U. S. 347, 362 (1915); Ex parte Yarbrough, 110 U. S. 651, 655 (1884).

The 1963 Acts directed a division of the registration and voting qualification record into two classes, one for Federal elections and another for State elections. For this purpose Code § 24-67 providing for registration, and § 24-17 for voting, were each amended and enlarged. No change was made with regard to State elections. These changes inserted for participation in Federal elections were twofold: (1) the withdrawal of the poll tax payment both for registration and for voting, and (2) the addition for voting of this requirement in Code § 24-17.2, set out in part below:

> "Proof of residence required; how furnished.—(a) No person shall be deemed to have the qualifications of residence required . . . [by the Constitution and statutes of Virginia] in any calendar year subsequent to that in which he registered . . . and [he] shall not be en-

titled to vote in this State [in any Federal election] . . . unless he has offered proof of continuing residence by filing in person, or otherwise, a certificate of residence at the time and in the manner prescribed in paragraph (b) of this section, or, at his option, by . . . [payment of the customary poll taxes]. Proof of continuing residence may only be established by either of such two methods.

"(b) Any person who shall offer proof of continuing residence by filing a certificate of residence as provided in paragraph (a) of this section, shall file with the treasurer of his county or city not earlier than the first of October of the year next preceding that in which he offers to vote and not later than six months prior to the election, a certificate in form substantially as follows:

" 'I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of ..... (city or county), residing at ..... (street and number, or place of residence therein), and that it is my present intention not to remove from the city or county stated herein prior to the next general election.

.....

Witnessed:

.....

or

Subscribed and sworn to before me this ..... day of ....., 19.....

.....

Notary Public

Every such certificate shall bear the signature of the person offering the same, and shall be verified by his affidavit or witnessed by at least one adult.

"(c) Proof of continuing residence by either of the two methods provided for in paragraph (a) of this section shall be deemed conclusive, subject only to challenge under § 24-253."

As a result of the new statutes a citizen after registration may vote in both Federal and State elections if he has satisfied the assessable poll tax; if he has not paid the tax he cannot vote in any State election but he may vote in a Federal election upon filing the certificate of residence.

I. The pivotal point before us is whether or not the certificate of residence is simply an instrument evidencing residence, that is, merely proof of the residence qualification; or a separate qualification put upon the Federal voter, or at least an enlargement of the residence qualification, which in either event is not placed on the State voter. Concededly, residence is a qualification properly required for both Federal and State suffrage. Lassiter v. Northampton Election Bd., 360 U. S. 45, 51 (1959).

In this determination, we reject the abstention argument pressed by the defendants: that the significance of the certificate and its character as used in the 1963 Acts is a State question, and we should stay our hand until the courts of Virginia are afforded the opportunity to interpret the term. Whether a requirement of State law constitutes a discrimination against the Federal voter, either by a separate or a disproportionate qualification, within the meaning of Article I, Section 2 and the 17th Amendment of the Federal Constitution is immediately a Federal question. No matter the careful and scrupulous study of the State courts, the de-

termination is one manifestly within the framework of the Federal Constitution and so must be the decision of the Federal court. In Ex parte Yarbrough, *supra*, 110 U. S. 651, 663 the Court said:

> "But it is not correct to say that the right to vote for a member of Congress does not depend on the Constitution of the United States.
>
> * * *
>
> "The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for members of Congress. Nor can they prescribe the qualification for voters for those *eo nomine*. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the *same* persons shall vote for members of Congress in that State." (Accent added)

Because of the 1963 Acts, with the poll tax removed from Federal elections, the electors in the two elections do not enjoy equal eligibility. The Federal elector must file a witnessed or notarized certificate of residence, not only declaring himself a current resident of Virginia, but also that he has been a resident since his registration. After giving the street number of his residence, he must give assurance of his intention not to remove from the city or county prior to the next general election.

On the other hand, remittance of the poll tax by the State elector need not be accompanied by any express representation whatsoever of present residence. No affirmative proof has to be adduced that it has continued uninterrupted since his original registration. Thus the State elector's residency is accepted as unbroken from the date of his registration. No such presumption is accorded the Federal voter. A posi-

tive and yearly renewed guarantee of residence is necessary for casting a Federal vote. True, a State elector may be challenged at the polls for insufficient residence, but this is a rare and optional practice.

These differences, while denied by the defendants, are urged as a distinction only in the means of proof of residence and are said not to be a variance in qualifications. The argument is that the poll tax payment requires all that the certificate requires. This view cannot stand against the obvious fact that the payment of the poll tax does not entail a procedure which is trustworthy in vouching residence. That the tax payment will be accepted in satisfaction of residential requirements even in a Federal election, despite its almost total deficiency as evidence of residence, reveals the certificate as an independent or superadded qualification.

We think the 1963 Acts do add a distinct qualification. The excess of exactions in themselves constitute a special qualification. But whether the 1963 Acts delineate another qualification or merely increase the quantum of necessary proof of residence, they unreasonably burden the duty of the Federal elector beyond that of the voter for the House of Delegates. This overburden, if not itself a separate qualification, is an increased qualification. The extra obligation offends the Federal Constitution by tasking the voter in an election for President, Vice President and Congress beyond what is asked of the elector in the choice of members of the House of Delegates. Art. I., § 2 and 17th Amendment.

Contra, we are cited to Southerland v. Norris, 74 Md. 326, 22 Atl. 137 (1891), and Pope v. Williams, 56 Atl. 543, (Md. 1903), *aff'd*, 193 U. S. 621 (1904). These cases sustained Maryland statutes treating with removal of persons from the State, their return and the entry of new residents. They sought proof of resumption or inception of residence.

But after the voter became qualified generally, neither case is authority for saddling a voter in a Federal election, in order to maintain his status, with a step or task beyond that required of a voter in a State election.

II. For non-joinder of indispensable parties the defendants move the dismissal of this action. The argument is that as the local electoral board, the registrars and clerks of court are the officers charged with the responsibility for the conduct of elections, no such declaratory or injunctive decree as prayed in the complaint would be effective in the absence of these officers. Only the State Board of Elections and the appropriate treasurer are named defendants. The proposition is unsound.

Poll taxes are paid to, and certificates of residence are filed with, the treasurer. He certifies to the election officials the lists of poll taxes paid and certificates filed. The Board prescribes and furnishes the certificates. Without the acts of these officers no election could proceed. They are sufficient parties for the aims of this suit.

III. Plaintiff's construe the 24th Amendment as erasing payment of poll taxes as a prerequisite to voting for members of the Virginia House of Delegates. We do not follow the reasoning of the plaintiffs to this end, and certainly do not subscribe to the conclusion. The legislative history of the joint resolution of the Congress eventuating in the 24th Amendment reveals beyond peradventure that the Amendment was not intended to outlaw poll taxes in any election other than a primary or general Federal election. House Report No. 1821, June 13, 1962, U. S. Code Cong. & Ad. News 4033, 4037, 87th Cong., 2d Sess. (1962). The very phraseology of the Amendment precludes any other interpretation. If the Congress had intended to illegalize the poll tax in all elections, it would have so declared in the

24th Amendment, as it did in the 15th and 19th, where comprehension of all elections was accomplished quite simply by omission of any designation of the elections affected. For the 24th Amendment an explicit designation was included as a limitation of its force to those elections named.

Furthermore, the poll tax as a condition to the exercise of the franchise in State elections has been constantly upheld. Breedlove v. Suttles, 302 U. S. 277 (1937); Saunders v. Wilkins, 152 F. 2d 235, 237 (4 Cir. 1945), *cert. denied*, 328 U. S. 870 (1946); Butler v. Thompson, 97 F. Supp. 17 (E. D. Va. 1951), *aff'd per curiam*, 341 U. S. 937. Indeed, the very fact that the Congress deemed a constitutional amendment necessary to abolish it in Federal elections demonstrates that such a tax is not in itself unconstitutional.

IV. That the Constitution of the United States requires the restraint upon the State which we now enforce, and the reason for it, are declared in that great commentary, the Federalist, No. 52, in this way:

> ". . . I shall begin with the House of Representatives.
>
> "The first view to be taken of this part of the government relates to the qualifications of the electors and the elected.
>
> "Those of the former are to be the same with those of the electors of the most numerous branch of the state legislatures. The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments that branch of

> the federal government which ought to be dependent on the people alone. . . . It must be satisfactory to every State because it is conformable to the standard already established, or which may be established by the State itself. It will be safe to the United States, because, being fixed by the State constitutions, it is not alterable by the State governments, and it cannot be feared that the people of the States will alter this part of their constitutions in such a manner as to abridge the rights secured to them by the federal Constitution."

An order will be entered declaring invalid, for the reasons stated, so much of the 1963 Acts—Chapters 1 and 2, approved November 21, 1963, of the Acts of the General Assembly of the Commonwealth of Virginia, Extra Session 1963—as requires the filing of a certificate of continuing residence six months before a general election as a prerequisite to the right of a person otherwise qualified to vote in a primary or general election for President or Vice President, or for Senators or Representatives in Congress, and enjoining the defendants, their agents, servants and employees from requiring compliance with this part of the Acts.

The order will be suspended, however, for 30 days to allow the defendants, if they be so advised, to appeal to the Supreme Court of the United States, but the suspension shall thereafter cease unless the Supreme Court, or one of the Justices thereof, shall in the interval enlarge the suspension. No bond shall be required of the defendants to perfect the appeal or to obtain the suspension.

APPENDIX III

ACTS OF ASSEMBLY

CHAPTER 1

An Act to authorize persons, in anticipation of ratification of the 24th Amendment to the Constitution of the United States, to file certificates of continuing residence so as to be able to vote, if otherwise qualified, in Federal elections to be held in the year 1964 without payment of a poll tax, to prescribe certain duties of the State Board of Elections, and to make an appropriation to the State Board of Elections.

[H1]

Approved November 21, 1963

Be it enacted by the General Assembly of Virginia:

1. (1) During the calendar year 1964 only and subject to the other provisions of this Act, every resident of Virginia who has been registered to vote prior to December 1, 1963, and who desires to vote during the calendar year 1964 without the payment of poll tax or any other tax, upon the adoption of the proposed 24th Amendment to the Constitution of the United States, in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in the Congress of the United States, may file a certificate of continuing residence in the office of the treasurer of his county or city, which shall be in form substantially as follows:

> "I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of ..... (city or county), re-

siding at ..... (street and number, or place of residence therein), and that it is my present intention not to remove from the city or county stated herein prior to the next general election.

.....

Witnessed:

.....

or

Subscribed and sworn to before me this ..... day of ....., 19.....

.....

Notary Public"

Such certificate shall be filed not later than six months prior to the general election held in November, 1964. Every such certificate shall bear the signature of the person offering the same and shall be verified by his affidavit or witnessed by at least one adult. Such certificate shall be conclusive of the facts stated therein, subject only to challenge under the provisions of § 24-253 of the Code.

(2) Such certificate shall be received by the treasurer, dated and marked filed, and upon the ratification of the proposed 24th Amendment to the Constitution of the United States, shall have the same force and effect as certificates of continuing residence filed under the provisions of § 24-17.2 of an Act of the General Assembly enacted at the special session of the General Assembly, 1963.

(3) The State Board of Elections shall forthwith prepare and distribute to the several county and city treasurers books in which such treasurers shall record the certificates of residence as provided for in this Act. The certificates

filed in the office of such treasurer shall be entered on such books alphabetically and by magisterial districts in counties and by wards or other election districts in cities.

2. There is hereby appropriated out of the general fund in the State treasury to the State Board of Elections a sum sufficient estimated at one thousand dollars.

Chapter 2

An Act to amend and reenact §§ 24-17, 24-67, 24-78, 24-79, 24-120, as amended, § 24-121 as amended, §§ 24-122, 24-123 and 24-124 of the Code of Virginia, and to amend the Code of Virginia by adding thereto sections numbered 24-17.1, 24-17.2, 24-28.1, 24-67.1, 24-87.1, 24-119.2 and 24-128.1, all of which amended and new sections relate to registration and voting in State, local and Federal elections, and to the duties of certain election officials; and to make an appropriation to the State Board of Elections.

[H 2]

Approved November 21, 1963

Be it enacted by the General Assembly of Virginia:

1. (a) Pursuant to the mandates of the Constitution of Virginia (including, without limitation, the provisions of Section 6 and Section 36 of the Constitution of Virginia), this Act is passed (1) to enable persons to register and vote in Federal elections without the payment of poll tax or other tax as required by the 24th Amendment to the Constitution of the United States, (2) to continue in effect in all other elections the present registration and voting requirements of the Constitution of Virginia, and (3) to provide methods by which all persons registered to vote in Federal or other

elections may prove that they meet the residence requirements of Section 18 of the Constitution of Virginia.

(b) The right of any citizen of the Commonwealth of Virginia to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in Congress of the United States, or to register to vote in any such primary or such election, shall not be denied or abridged by reason of failure to pay any poll tax or other tax.

2. That §§ 24-17, 24-67, 24-78, 24-79, 24-120, as amended, § 24-121, as amended, §§ 24-122, 24-123 and 24-124, of the Code of Virginia, be amended and reenacted, and that the Code of Virginia be amended by adding §§ 24-17.1, 24-17.2, 24-28.1, 24-67.1, 24-87.1, 24-119.2 and 24-128.1, the amended and new sections being as follows:

§ 24-17. Persons entitled to vote at all general elections. —Every citizen of the United States twenty-one years of age, who has been a resident of the State one year, of the county, city or town, six months, and of the precinct in which he offers to vote thirty days next preceding the general election, in which he offers to vote, has been duly registered * under the provisions of § 24-67, and who, at least six months prior to such election in which he offers to vote, has personally paid to the proper officer all State poll taxes assessed or assessable against him for the three years next preceding the year in which such election is held, and is otherwise qualified, under the Constitution and laws of this State, shall be entitled to vote for members of the General Assembly and all officers elective by the people. Removal from one precinct to another in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days from such removal.

§ 24-17.1. Persons entitled to vote only at elections for certain Federal officers.—Every citizen of the United States twenty-one years of age, who has been a resident of the State one year, of the county, city or town, six months, and of the precinct in which he offers to vote thirty days next preceding the general election, in which he offers to vote, and who has been duly registered under the provisions of § 24-67, but who, at least six months prior to such election in which he offers to vote, has not personally paid to the proper officer all State poll taxes assessed or assessable against him for the three years next preceding the year in which such election is held, or who has been duly registered under the provisions of § 24-67.1, in either case if he is otherwise qualified under the Constitution and laws of this State, shall be entitled to vote in the following elections and no other: primary or other elections for President or Vice-President of the United States, for electors for President or Vice-President of the United States, or for Senator or Representative in the Congress of the United States. Removal from one precinct to another in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days from such removal.

§ 24-17.2. Proof of residence required; how furnished. —(a) No person shall be deemed to have the qualifications of residence required by Section 18 of the Constitution of Virginia and §§ 24-17 and 24-17.1 in any calendar year subsequent to that in which he registered under either § 24-67 or § 24-67.1, and shall not be entitled to vote in any election held in this State during any such subsequent calendar year, unless he has offered proof of continuing residence by filing in person, or otherwise, a certificate of residence at the time and in the manner prescribed in paragraph

(b) of this section, or, at his option, by personally paying to the proper officer, at least six months prior to any such election in which he offers to vote, all State poll taxes assessed or assessable against him for the three years next preceding that in which he offers to vote. Proof of continuing residence may only be established by either of such two methods.

(b) Any person who shall offer proof of continuing residence by filing a certificate of residence as provided in paragraph (a) of this section, shall file with the treasurer of his county or city not earlier than the first of October of the year next preceding that in which he offers to vote and not later than six months prior to the election, a certificate in form substantially as follows:

"I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of ..... (city or county), residing at ..... (street and number, or place of residence therein), and that it is my present intention not to remove from the city or county stated herein prior to the next general election.

.....

Witnessed:

.....

or

Subscribed and sworn to before me this ..... day of ..... 19 .....

.....

Notary Public"

Every such certificate shall bear the signature of the person offering the same, and shall be verified by his affidavit or witnessed by at least one adult.

(c) Proof of continuing residence by either of the two methods provided for in paragraph (a) of this section shall be deemed conclusive, subject only to challenge under § 24-253.

(d) The treasurer shall keep in his office for public inspection, for at least two years after the same are filed, the certificates mentioned in paragraph (b) of this section.

(e) Nothing contained in this or any other section of this Act shall be construed as affecting any of the provisions of Chapters 2.1 and 13.1 of Title 24 of the Code relating to voters in the armed services.

* * *

§ 24-67. Who to be registered for all elections.—(a) Each registrar shall register pursuant to the provisions of this paragraph every citizen of the United States, of his election district, who shall apply in person to be registered at the time and in the manner required by law, who, * at the time of the next general election, shall have the qualifications of age and residence required in Section 18 of the Constitution of Virginia, and who * has paid to the proper officer all State poll taxes assessed or assessable against him for the three years next preceding the year in which such election is held, or if he come of age at such time that no poll taxes shall be assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents in satisfaction of the first year's poll tax assessable against him.

(b) The names of all persons who have been registered under paragraph (a) of this section shall be enrolled in the registration book or type of record in use on the effective

date of this Act, which shall be known as "Roll of Persons Registered for All Elections."

(c) Persons registered under paragraph (a) of this section shall be registered to vote in every general, special or primary election held in this State; provided that no person registered under § 24-67.1 shall be deemed registered to vote in any general, special or primary elections except those elections for the offices enumerated in paragraph (c) of § 24-67.1, until he shall have been registered under paragraph (a) of this § 24-67.

§ 24-67.1. Who to be registered only for Federal elections.—(a) Each registrar shall register pursuant to the provisions of this paragraph every citizen of the United States, of his election district, who shall apply in person to be registered at the time and in the manner required by law, who, at the time of the next general election, shall have the qualifications of age and residence required in Section 18 of the Constitution of Virginia, but who has not paid all State poll taxes assessed or assessable against him as required in Section 20 of the Constitution of Virginia and § 24-67.

(b) The names of all persons who have been registered under paragraph (a) of this section, shall not be enrolled in the registration books referred to in § 24-67, but shall be enrolled in a separate registration book or other type of record, which shall be known as "Roll of Persons Registered for Federal Elections Only."

(c) Persons registered under paragraph (a) of this section shall be registered to vote only in primary or other elections for President or Vice-President of the United States, for electors for President or Vice-President of the United States, or for Senator or Representative in the Con-

gress of the United States, and shall not by virtue of registration under this section be deemed to be registered to vote in any other general, special or primary elections held in this State.

APPENDIX IV

EXCERPTS FROM ADDRESS OF

ALBERTIS S. HARRISON, JR., GOVERNOR

to the General Assembly of Virginia

Extra Session
Tuesday, November 19, 1963

* * *

As a consequence, and operating under the Constitution of 1902, Virginia has the simplest system of registration and voting of any State in the Union. Any resident of Virginia, with sufficient intelligence to know such things as his name, age, date and place of birth, residence and occupation, and can scribble a legible signature, can register. He need own no property—or pay any taxes, other than a $1.50 a year capitation tax, for not exceeding three years. Once admitted to registration, he is registered permanently. Unlike so many states, Virginia does not require that this registration ever be renewed.

The framers of our Constitution recognized that if we were to have permanent registration, and thereby promote full participation in elections by the residents of this State, a means would have to be devised to provide annually a current list of the residents of this State. Obviously, we could not rely on the registration books alone. A safeguard

had to be provided to determine whether those persons who had registered were still residents of Virginia and entitled to participate in the election in which they offered to vote.

A person who removes himself from this State and abandons his residence here, is not entitled to vote in this State. By the same token, Virginia is gaining population rapidly, and it is important that these welcomed new citizens be registered and encouraged to vote immediately they satisfy the conditions, both as to residency and registration incident to voting.

The architects of the Constitution, having determined upon permanent registration, and having abandoned the requirement of ownership of property as a qualification to vote, and then having failed to provide any effective literacy test, were confronted with the problem of how the electorate could be restricted to residents of this State,—and some stability attained.

Obviously they could not use the real estate or personal property tax list, for ownership of property was not to be made a condition for voting, and for the further very practical reason that many residents of Virginia do not own real or personal property, but do possess the intelligence, interest, and the ability to exercise the right of franchise.

It became apparent that the only list which should contain the name of every adult resident of Virginia was the capitation tax list. Accordingly, and out of the genius of that body of men, originated our present system, whereby it is presumed that any person, assessed with a capitation tax (and thereby alleged to be a resident of Virginia) who comes forward and voluntarily pays the assessment, six months prior to a general election, shall be presumed to be a resident of Virginia, and shall be deemed to have satisfied those provisions of the Constitution of this State which restrict voting to such residents.

Again I remind you that the capitation tax is Virginia's only universal tax that is assessed on every adult. It is a debt and is owed like all other taxes. It is paid by the citizens of this State in the same manner as a good citizen pays his other tax obligations. Because the tax is universal, the names and addresses of the persons against whom it is assessed are obtained by the Commissioners of Revenue from innumerable sources, and in some instances, the tax is assessed erroneously and inadvertently on people who have moved from Virginia, people who are dead, and some who are nonexistent. Certainly the voluntary payment of this tax by a person is fairly conclusive proof of the correctness of the assessment, and confirmation by that person of the fact that he is still a resident of this State.

In any event, this system has served Virginia well for more than a half a century. Last year, approximately one and a quarter million Virginians paid this tax.

The requirement that the tax be paid six months prior to the General Election is to prevent fraud, corruption and dishonesty, and to promote stability in the electorate.

To understand the six-month provision in our Constitution, one must have some knowledge of the conditions that existed in Virginia prior to the Constitutional Convention of 1901-1902. In that Convention, it was acknowledged time and again, by gentlemen from all sections of the State, that politics in Virginia were then corrupt; that there was a large purchasable element; that voters were bought and sold; that manipulation of voters by corrupt political leaders often constituted the balance of power in elections. It is interesting to note here that one of the members of the Convention in commenting on this corruption, said: "It is not the Negro vote which works the harm . . . it is the depraved and incompetent men of our own race, who have nothing at

stake in government, and who are used by designing politicians, to accomplish their purposes, irrespective of the welfare of the community."

It was because of this background that those who wrote the laws, under which we now operate, determined that participation in Virginia's elections would be encouraged by all interested citizens and those who had a stake in Virginia, and further that Virginia would throw around her elections, and the participants therein, every possible protection. This they accomplished, first by requiring those who desired to participate in elections to attest their residency by payment of a lawful tax, six months prior to the General Election.

Certainly there is no individual possessing the interest and concern to have a voice in his government who does not know, six months in advance, that he will want to vote on who is to represent him at all levels of government, and on all the issues properly to be submitted to the people.

Then, as an added safeguard, they wrote Section 38 of the Constitution, imposing specific duties on Treasurers, Clerks of Court and Sheriffs, in regard to the making, filing, certifying and publicizing the list of those who had paid poll taxes. And they required all of this to be done well in advance of any primary or General Election. The list is not only available for inspection in the office of every Clerk, but it must be posted at every polling place, and is thereby accessible for inspection by every citizen and every person who passes by. It is this publicity that has the prophylactic effect. It is the finest medium ever devised to prevent fraud and improper voting by non-residents of Virginia, or by any person who is not qualified from a residential standpoint to vote in a Virginia election.

Section 36 of the Virginia Constitution imposes upon this Body the responsibility to "enact such laws as are necessary

and proper for the purpose of securing the regularity and purity of general, local and primary elections. . . ."

It is because of this responsibility that we are here assembled. If the proposed Amendment 24 to the United States Constitution is adopted, and payment of the poll tax can no longer be a prerequisite to registering or voting, we will have no adequate safeguard under existing statutes to prevent persons who are registered, but no longer reside in this State, from voting in the 1964 elections, and in federal elections thereafter held.

In consideration of this matter, we must always keep in mind that under our system of permanent registration, a person once registered in Virginia is forever registered, until his name is purged from the list. In some of our counties and cities, the registration books are seldom, if ever, purged. Persons are carried on some books who have been dead for years or who have long since moved their residence from Virginia, or are otherwise disqualified from voting. In a hotly contested election, the opportunity to commit fraud or irregularities would be so great and so easy that our only protection is to remove the temptation by legislation at this extra session.

It has taken me longer than I should to get to this point in my remarks to you. In brief, and in anticipation of the adoption of Amendment 24, we need to devise something which will do for Virginia in federal elections what our capitation tax list presently accomplishes. That such action would be necessary has been a matter of common knowledge for many months, and has been the subject of numerous conferences between your Governor, the Attorney General of Virginia, and others, who are concerned with preserving the purity of Virginia's elections. At my request, the Attorney General has prepared bills which I hope will have

your approval. Our election laws are numerous and complicated because they involve not only federal, but State, county, city and town elections. They have evolved over a long period of years, and have come into being in an effort to promote full participation in elections and to assure their honesty. Under our Constitution, a great many public officials are charged with various responsibilities and duties to make certain that all properly registered residents of this State are permitted to vote. Therefore, we have to amend numerous sections of the Code.

However much we may disagree with the action of those states that have and will adopt the proposed Amendment 24 to the United States Constitution, we must agree that if this Constitution is to be amended, the manner in which it is being presently accomplished is legal, and certainly preferable to the judicial amendments thereto that we have witnessed in recent years.

I, therefore, recommend that this General Assembly enact a law to become effective upon the adoption of Amendment 24, prohibiting the denial or abridgement of the right of any citizen of Virginia to vote in any primary or other election for President or Vice President, or for Senator or Representative in Congress, by reason of failure to pay any poll tax or other tax.

The provisions in the Constitution of Virginia which require the payment of a capitation tax as a prerequisite to registering and voting in State and local elections, are deeply embedded therein, involve innumerable basic provisions, and will so remain until two separate General Assemblies and the people of Virginia decide otherwise. It is my considered judgment that it would be unwise to give even cursory attention or thought to tampering with Virginia's Constitution without careful and painstaking study. Such action at

this extra session would be hasty, ill advised, and not in the best interest of the people of this State.

Since the payment of a capitation tax will remain a prerequisite to voting in State and local elections in Virginia, I recommend that such payment continue to be accepted as proof of residency, and as a compliance with the residency requirement of Section 18 of the Virginia Constitution as to federal elections.

I further recommend that a bill be enacted, effective upon adoption of Amendment 24, which will give to every resident of Virginia the privilege of registering and voting, in federal elections, without regard to the payment of a capitation tax, or the time of its payment, provided he complies with other provisions of the Constitution and laws of Virginia, and, provided further, that six months prior to the General Election, he files a certificate with the Treasurer of the county, or city, in which he resides, setting forth that he is a resident of Virginia. To give such a certificate proper authenticity, it should be witnessed or acknowledged.

The Treasurer, Clerk, Sheriff and Sergeants, will be required to verify, certify and post such certifications of residence in exactly the same manner, and form, as they presently handle the list of persons who pay capitation taxes. The same publicity will attend both lists, and the same protections will prevent fraud and improper voting by both classes of voters.

In essence, the bills which are proposed will provide two methods by which residents of Virginia may register and vote in elections. One will be to comply with all existing provisions of the Constitution and laws of Virginia, including the payment of a capitation tax (which establishes residency) six months prior to the General Election. A person will thereby qualify to vote in all elections, federal, State

and local. The other, which will take effect upon the adoption of the 24th Amendment, will enable any resident of Virginia to register without payment of any poll tax, and to vote without payment of such tax, in federal elections only, provided that he establishes Virginia residency by filing of the certificate of residence six months prior to the General Election.

It is, of course, unnecessary for me to remind you that all legislation enacted at this session of the General Assembly is conditioned upon the ratification of the proposed 24th Amendment to the Constitution of the United States by the necessary number of states. We concede the possibility that such ratification may not occur prior to November, 1964. Irrespective of this, we simply cannot go into the important elections of 1964, in which we will select in Virginia one United States Senator, ten Congressmen, and participate in the election of a President and a Vice President, without the necessary safeguards. The privilege of selecting those who govern us is the most important responsibility discharged by any citizen of Virginia. Every protection should be provided to the end that this participation be not only free and full, but assured to and exercised by only those persons entitled to the privilege.

To those of y who may be tempted to rewrite the sections of our State Constitution dealing with the right of franchise, or may feel that this will be an easy accomplishment, I would remind you that the Constitutional Convention of 1901-1902 held as great an array of talent as has ever been assembled at any one time in Virginia. The one impelling and paramount reason for that Convention was the corruption, fraud and dishonesty that had crept into the political life of Virginia, and this was due in large measure to the election machinery then in operation. That Conven-

tion devoted more time, debate and prayerful consideration to the matter of suffrage, than to any other one subject. The Constitution under which we have operated for over sixty years was the outgrowth of nearly two years of deliberation.

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